

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
)  
)

JAMES C. HODGE, former President )  
and Chairman of the Board of )  
Mercantile Savings Bank, )  
Southaven, Mississippi )  
)  
)  
)

Re: Resolution No. DAL-92-72

Dated: October 16, 1992

STIPULATION AND CONSENT TO THE ENTRY  
OF A CEASE AND DESIST ORDER

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office of the OTS, and James C. Hodge ("Hodge"), former President and Chairman of the Board of Mercantile Savings Bank, Southaven, Mississippi ("Mercantile"), stipulate and agree as follows:

1. CONSIDERATION

The OTS, based upon information reported to it, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Hodge pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.S. § 1818(b) (Supp. 1992). Hodge desires to cooperate with the OTS and to avoid the time and expense of such administrative cease and desist litigation and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease and desist litigation against Hodge with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. JURISDICTION

- (a) Mercantile, at all times relevant to the allegations set forth herein, was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C.S. § 1813(b) (Supp. 1992) and Section 2(4) of the Home Owners' Loan Act of 1933, 12 U.S.C.S. § 1462(4) (1992). Accordingly, it was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C.S. § 1813(c) (Supp. 1992).
- (b) The Director of the OTS has the authority to bring an administrative cease and desist order proceeding against a savings association and/or institution-affiliated party pursuant to Section 5(d)(1)(A) of the HOLA, 12 U.S.C.S. § 1464(d)(1)(A) (1992), and Section 8(b) of the FDIA, 12 U.S.C.S. § 1818(b) (Supp. 1992).
- (c) Hodge was, at all times relevant to the allegations set forth herein, an officer and director of Mercantile and as such was an "institution-affiliated party" as that term is defined in Section 3(u) of the FDIA, 12 U.S.C.S. § 1813(u) (Supp. 1992).
- (d) As an institution-affiliated party, Hodge is subject to the OTS's authority to maintain cease and desist proceedings.
- (e) The OTS alleges that contrary to safe and sound practices, Hodge, as President and Chairman of the

Board of Mercantile, engaged in, or aided and abetted in, the following regulatory violations:

- (i) 12 C.F.R. §§ 337.6(b) and 563.4(c) - Hodge accepted brokered deposits in the amount of \$5,936,000 between February 7, 1991 and February 12, 1991, on behalf of Mercantile without proper regulatory approval and without the approval of the Board of Directors while it was failing to meet its minimum regulatory capital requirements;
- (ii) 12 C.F.R. § 303.13(d) - Hodge oversaw excessive investments in Mercantile's service corporation, Mercantile Mortgage Corporation, without regulatory approval, as cited in the OTS reports of examination dated April 2, 1990 (18.43% of assets when limitation was 2% of assets), and January 12, 1991 (9.36% of assets when limitation was 2% of assets);
- (iii) 12 C.F.R. § 563.131 - Hodge, as President, caused Mercantile to violate its growth restrictions imposed by 12 C.F.R. § 563.131, as cited in the OTS report of examination dated April 2, 1990. Liability growth exceeded the 12.5% limitation of 12 C.F.R. § 563.131(a)(1) in

the two quarter periods ending June 30, 1989 (60%) and December 31, 1989 (17%);

- (iv) 12 C.F.R. § 563.170(b) & (c) - Hodge, as President, failed to maintain accurate and complete records on Mercantile's foreclosure claims receivable, as cited in the OTS reports of examination dated April 2, 1990 and January 14, 1991;
- (v) 12 C.F.R. § 563.233 - Hodge, as President, allowed reporting errors in the December 1990 Thrift Financial Report, as noted in the January 14, 1991 OTS report of examination. Hodge also failed to accurately reflect and account for Mercantile's investment in its service corporation, Mercantile Mortgage Corporation; and its total withdrawable accounts on its Thrift Financial Reports and Mercantile's books, as noted in the OTS report of examination dated April 2, 1990. Hodge failed to maintain accurate records, properly disclose assets, and account for foreclosure claims, as noted in the January 14, 1991 OTS report of examination; and
- (vi) 12 C.F.R. § 563.43, 12 U.S.C.S. § 1468

(1992), 12 U.S.C.S. § 375b (1992), 12 C.F.R. §§ 215.4 and 215.7 - Hodge sold his stock of Mercantile's service corporation, Mercantile Mortgage Corporation, to CSB Mortgage Corporation on April 19, 1985, which transferred personal liability from Hodge and another Mercantile director to Mercantile. This transaction also involved the granting of loans to Hodge and another Mercantile director to effectuate a settlement agreement arising from disputes over the original contract of sale, which were made in violation of 12 C.F.R. § 563.43. These conflicts of interest were cited in the OTS report of examination dated April 2, 1990. Other conflicts of interest include Hodge's overdrafts in three checking accounts at Mercantile in amounts up to \$17,361, advances by Mercantile to Hodge in the amount of \$38,532 as of March 31, 1990, and personal expenses of Hodge paid by Mercantile, all of which Hodge reimbursed to Mercantile during the April 2, 1990 OTS examination where they were cited. Additional conflicts of interest cited in the January 14, 1991 OTS report of

examination include two interest-free advances totaling \$100,433 made to Hodge on August 13, 1990 and September 28, 1990, which, although were repaid with interest during the January 14, 1991 OTS examination, constitute extensions of credit greater than \$100,000 in violation of 12 C.F.R. § 563.43(b)(5); overdrafts in Hodge's account on May 21, 1990 and June 18, 1990 in the amounts of \$1,483 and \$4,205 which were paid along with NSF charges by Hodge during the January 13, 1991 OTS examination; and expenses incurred by Hodge and paid by Mercantile for fourteen charges totaling \$472 with insufficient documentation to determine if they were personal or business related which were reimbursed to Mercantile by Hodge during the January 14, 1991 OTS examination. (collectively, the "allegations").

- (f) Therefore, the OTS believes Hodge is subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against him pursuant to Section 8(b) of the FDIA, 12 U.S.C.S. § 1818(b) (Supp. 1992).

3. CONSENT

- (a) Hodge consents to the issuance by the OTS of the

Order. He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

- (b) Hodge acknowledges and agrees that this Stipulation and Consent and the Order does not compromise, settle, dismiss, resolve, preclude, or in any way affect any civil or criminal actions, charges against, or liability of Hodge that arise pursuant to this action or otherwise, and that may be or have been brought by the Resolution Trust Corporation or any other governmental entity other than the OTS.
- (c) The OTS acknowledges and agrees that the execution and delivery by Hodge of this Stipulation and Consent to the Entry of a Cease and Desist Order and the corresponding Order, and the Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalties in the amount of \$20,000 and the corresponding Order, and the compliance by Hodge with the terms thereof, are intended and issued as a settlement and resolution of all claims of the OTS against Hodge relating only to the transactions specifically described in Paragraph Number 2(e) of this Stipulation, and are not intended to, nor shall they be construed to have the effect of compromising, settling, dismissing, resolving, or in any way limiting or affecting the right of authority of any other federal or state governmental or administrative

agency or department, or conservator or receiver, to initiate or pursue any other action, civil or otherwise, against Hodge.

- (d) The OTS acknowledges and agrees that this action is civil in nature pursuant to the provisions of Section 8(b) of the FDIA, 12 U.S.C.S. § 1818(b) (Supp. 1992).

4. FINALITY

The Order is issued under Section 8(b) of the FDIA, 12 U.S.C.S. § 1818(b) (Supp. 1992). Upon its issuance by the Regional Director for the Midwest Regional Office of the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C.S. § 1818(i) (Supp. 1992).

5. WAIVERS

Hodge waives his right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C.S. § 1818(b) (Supp. 1992), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C.S. § 1818(h) (Supp. 1992), or otherwise to challenge the validity of the Order.

6. GENERAL PROVISIONS

- (a) References in this Stipulation and Consent and in the corresponding Order to provisions of statutes and regulations shall, unless the context thereof clearly indicates otherwise, include references to all amendments thereto.
- (b) All terms not otherwise defined herein that are defined in the HOLA, FDIA, FIRREA, the Rules and



Regulations of the OTS (including, without limitation, 12 C.F.R. §§ 500.1 et seq., 541.1 et seq., and 561.1 et seq. (1992)) or its publicly-available Bulletins and Advisory Memoranda shall have the meanings to them in such statutes, rules and regulations, Bulletins, or Advisory Memoranda. All technical words or terms not otherwise subject to a definition in this Stipulation shall have the meanings that accord with the best custom and usage in the thrift industry.

- (c) To the extent that any provision of the Federal Deposit Insurance Corporation Improvement Act of 1992, Pub. L. No. 102-242, 105 Stat. 2236 (Dec. 19, 1991) ("FDICIA") or any regulation(s) promulgated thereunder imposes more restrictive requirements than any provision contained in this Order (either expressly or through OTS interpretative Bulletins or policy statements), such provision(s) of the FDICIA or such regulation(s) shall be controlling.
- (d) This Order shall remain in effect until terminated, modified or suspended in writing by the Regional Director or his designee and shall become effective upon the date of issuance.
- (e) In case any provision in the Order is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining

provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director or Regional Deputy Director, in his or her sole discretion, determines otherwise.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Regional Director for the Midwest Regional Office of the OTS, and Hodge have executed this Stipulation and Consent to the Entry of a Cease and Desist Order as of the date first above written.

OFFICE OF THRIFT SUPERVISION

JAMES C. HODGE

By: /S/  
Frederick R. Casteel  
Regional Director  
Midwest Regional Office  
Dallas, Texas

/S/

James C. Hodge

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
)  
)

JAMES C. HODGE, former President )  
and Chairman of the Board of )  
Mercantile Savings Bank, )  
Southaven, Mississippi )  
)  
)

Re: Resolution No.: DAL-92-72

Dated: October 16, 1992

ORDER TO CEASE AND DESIST

WHEREAS, James C. Hodge ("Hodge") has executed a Stipulation and Consent to Issuance of Order to Cease and Desist, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Regional Office; and

WHEREAS, Hodge, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.S. § 1818(b) (1992).

NOW THEREFORE, IT IS ORDERED that:

1. Hodge shall cease and desist from any violation of, and from aiding and abetting any violation of: 12 C.F.R. §§ 303.13, 337.6, 563.4, 563.43, 563.131, 563.170, 563.233, Section 11 of the Home Owners Loan Act of 1933, 12 U.S.C.S. § 1468 (1992), Section 22(h) of the Federal Reserve Act, 12 U.S.C.S. § 375b (1992), and its implementing regulations, 12 C.F.R. §§ 215.4 and 215.7.
2. Without the prior written approval of the Regional Director for the Midwest Regional Office of the OTS or his successor or

designee ("Regional Director") and, if appropriate, another Federal financial institutions regulatory agency, Hodge may not hold any office in, serve as a director for, or participate in any manner in the conduct of the affairs of any insured savings association, as that term is defined in Section 3(b) of the FDIA, 12 U.S.C.S. § 1813(b) (1992), and Section 2(4) of the Home Owners' Loan Act of 1933, 12 U.S.C.S. § 1462(4) (1992), hereinafter referred to as a "Covered Institution". Conduct prohibited by this Order includes, inter alia, the solicitation, transfer or exercise of any voting rights with respect to any securities issued by any savings association.

3. If approval is obtained from the Regional Director of the OTS or, where appropriate, another Federal financial institutions regulatory agency, Hodge, upon becoming a director, officer, or controlling person of a savings association, or any holding company thereof, shall obtain advice of competent counsel on his duties and responsibilities, both initially upon accepting such a position and when particular issues arise that may cause Hodge to be uncertain about his responsibilities.
4. Nothing in this Order, however, restricts Hodge from any of the following activities, even though such activities may involve or relate to a Covered Institution:

- (b) owning stock, but less than a controlling interest as defined in Section 7(j) of the FDIA, 12 U.S.C.S. § 1817(j) (1992) and 12 C.F.R. § 574.4 in a Covered Institution;

Provided, however, that such activities may not be performed in a manner that would make Hodge an "institution-affiliated party" as that term is defined at Section 3(u) of the FDIA, 12 U.S.C.S. § 1813(u) (1992).

THE OFFICE OF THRIFT SUPERVISION

By: /S/  
Frederick R. Casteel  
Regional Director  
Midwest Regional Office  
Dallas, Texas